

March 1, 2001

Honorable Norman K. Ferguson, Senate Chair
Honorable William R. Savage, House Chair
Joint Standing Committee on Utilities and Energy
115 State House Station
Augusta, ME 04333

Re: LD 486, An Act to Implement a State Universal Service Fund

Dear Senator Ferguson and Representative Savage:

The Commission will testify neither for nor against LD 486, An Act to Implement a State Universal Service Fund, subject to amendments that we will introduce in our testimony. We will be present at the work session and will be pleased to work with the Committee as it considers this bill.

The Commission is sympathetic to the basic intent of LD 486 – to guarantee that a Universal Service Fund (USF), as mandated by the Telecommunications Act of 1996 (TelAct), is created by a date certain. The TelAct sets forth a variety of goals to be accomplished by a USF, including a guarantee that all Maine's telephone customers receive reasonably comparable services at reasonably comparable and affordable rates. We are working toward that end and in recent years have conducted inquiries into the most effective methods for accomplishing those goals. This legislation would add specificity to the current State law governing USF development by setting time tables for components of the USFs already under development at the Commission.

However, four important changes must be made. Absent those changes, we would oppose the bill. The first change revises timetables for one portion of the USF fund. The second change rewords the descriptions of the funds to incorporate correct terminology. The third clarifies that the bill does not guarantee revenue neutrality. The fourth clarifies that the State USF fund will be created pursuant to provisions in the TelAct and current State law and is not governed by the provisions that determine the time table.

First, we will explain three USF fund components that we understand the bill to describe, using terminology that we have used in our most recent USF Notice of Inquiry:

1. A "High Cost" USF would compensate rural, independent telephone carriers who will not be able to earn a fair rate of return without additional assistance when access rates are lowered on May 30, 2001. Before a carrier receives compensation, we will examine their rate of return and the ability to raise their rates.

2. A "Fair Competition" USF would identify subsidies that currently exist in some carriers' rates, and make those subsidies explicit and portable so that new competitors will receive or contribute the same support as the incumbent carriers. The Fair Competition USF would avoid competitive carriers from "cream skimming" an incumbent carrier's low-cost customers.

3. The bill appears to contain a third USF component – a fund to equalize the expense of mandated programs such as Lifeline and Linkup. Like the Fair Competition USF, this USF would avoid the unfair competitive advantage held by competitive carriers who do not offer Lifeline and Linkup.

The High Cost USF must be in place by May 30, 2001, to aid the carriers whose rate case proceedings indicate that rate relief is necessary when access codes are reduced. We have begun a proceeding to meet this need. The bill is consistent with this approach.

The Fair Competition USF will be far more difficult to accomplish. While states across the nation are examining the best mechanisms for implementing universal service, development is still in the early stages. We have retained a consultant to help us develop the relatively complex computer model necessary to establish the USF and to establish a fund administrator as required by the TelAct. It is not possible or necessary to finish these tasks by May 30, 2001. The bill is also consistent with this fact and sets the completion deadline at May 30, 2002.

Our first disagreement with the bill is with the timetable required for the third USF component described above. The bill would have this component – described in the bill as "make explicit any embedded or implicit subsidies..." -- in place by May 30, 2001. In our view, this third fund is a subset of the Fair Competition USF. It is unlikely that we can accomplish its implementation before May 30, 2001, and the time spent attempting to do so would jeopardize our ability to implement the High Cost USF. The High Cost USF is necessary by May 30, 2001; the third USF component described above is not. We therefore can only support the bill if the so-called third component is included with the Fair Competition USF and implemented by May 30, 2002.

Our second disagreement is with the words used to describe the USF components. The words used in the bill are a reversal of the terms we used in our Notice of Inquiry. Based on our discussions with TAM, we believe this disagreement is with terminology, not substance.

Third, we are concerned that the bill as written suggests that the High Cost USF would guarantee revenue neutrality when compared with today's rates. The High Cost USF will ensure comparable, affordable rates, as required by the TelAct, not rates equal to today's rates. In our Inquiry, we are exploring the approach of allowing a company's rates to increase to the level of Verizon's rates for a similar exchange as a means of attaining "comparability." The bill's language should be revised to guarantee that it would not be interpreted to guarantee revenue neutrality.

Finally, this bill should not establish the content or procedures for a State USF fund; it should only establish the dates by which the fund will be created. The bill's language should be revised to ensure this outcome.

To address these four concerns, we recommend that Parts A and B of Sec. 2 be revised to read:

A. ~~Identify and make explicit any embedded or implicit subsidies existing in intrastate rates and p~~Provide support for the loss of subsidies that result from the reduction of a telephone utility's access charges, to ensure that rates are reasonably comparable throughout the State and that carriers have the ability to earn a reasonable rate of return. The rules adopted under this paragraph must be adopted by May 30, 2001; and

B. Provide support to telephone utilities with high costs for the provisioning of telephone utility service by identifying and making explicit any implicit subsidies existing in intrastate rates in a manner consistent with the federal Telecommunications Act of 1996 and the terms of this Section, to ensure that basic service rates are reasonably comparable throughout the entirety of the State. The rules adopted under this paragraph must be adopted by May 30, 2002.

Finally, we note that initially the Fair Competition USF should be implemented only for Verizon, because the remaining incumbent local exchange carriers maintain a rural exemption from competition mandated by the TelAct. We believe that the bill allows Commission Rule to determine the time frames for implementing the Fair Competition USF for each utility, and that no wording change is necessary to address this issue.

If you have any questions, please contact me.

Sincerely,

Marjorie R. McLaughlin
Legislative Liaison